

ESTTA Tracking number: **ESTTA493725**

Filing date: **09/11/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	RICH PRODUCTS CORPORATION		
Entity	Partnership	Citizenship	USA
Composed Of:	William E. Grieshober, Jr., U.S. Citizen		
Address	ONE ROBERT RICH WAY BUFFALO, NY 14213 UNITED STATES		

Attorney information	BRIAN E. TURUNG FAY SHARPE LLP 1228 Euclid Ave. The Halle Bldg., 5th fl. CLEVELAND, OH 44115 UNITED STATES bturung@faysharpe.com Phone:216-363-9100
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### Applicant Information

Application No	85577551	Publication date	08/14/2012
Opposition Filing Date	09/11/2012	Opposition Period Ends	09/13/2012
Applicant	VegiPro Brands, LLC 2655 University Street Eugene, OR 97403 UNITED STATES		

### Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: Whipped topping
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### Grounds for Opposition


Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1882377	Application Date	02/28/1994
Registration Date	03/07/1995	Foreign Priority Date	NONE
Word Mark	ON TOP		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1986/02/05 First Use In Commerce: 1986/02/05 non-dairy whipped topping

U.S. Registration No.	1496918	Application Date	08/28/1987
Registration Date	07/19/1988	Foreign Priority Date	NONE
Word Mark	RICH'S ON TOP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1986/02/05 First Use In Commerce: 1986/02/05 NON-DAIRY WHIPPED TOPPING		

U.S. Application No.	85380953	Application Date	07/26/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ON TOP		
Design Mark			
Description of Mark	The mark consists of the words "ON TOP" in front of twenty-four (24) horizontal lines.		
Goods/Services	Class 029. First use: First Use: 1986/01/01 First Use In Commerce: 1986/01/01 non-dairy whipped topping		

Attachments	85380953#TMSN.jpeg ( 1 page )( bytes ) Opposition.PDF ( 4 pages )(143695 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/BRIAN E. TURUNG/
Name	BRIAN E. TURUNG
Date	09/11/2012



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85/577,551

Published August 14, 2012

	x	
Rich Products Corporation	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
VegiPro Brands, LLC	)	
dba Exposure SMI Limited	)	
	)	
Applicant.	)	
	x	

**NOTICE OF OPPOSITION**

Rich Products Corporation (hereinafter “Opposer”), a corporation of the state of Delaware having an address of One Robert Rich Way, Buffalo, New York 14213, believes it will be damaged by registration of the mark shown in Application Serial No. 85/577,551 filed by VegiPro Brands, LLC (“Applicant”) and hereby opposes registration of said mark.

**COUNT I**

1. Upon information and belief, Applicant filed an intent to use application and use application to register the mark “BETTER ON TOP!”, Application Serial No. 85/577,551 for “whipped topping” (“Applicant’s Goods”) in International Class 029 on March 22, 2012.
2. Upon information and belief, Applicant did not use “BETTER ON TOP!” for Applicant’s Goods prior to March 2012.
3. Opposer is now, and for many years, has been offering for sale and selling whipped topping products.

4. Opposer owns two registrations on the Principal Register pertaining to or including the mark ON TOP, namely Reg. No. 1,882,377 for the mark “ON TOP” associated with “non-dairy whipped topping”; and Reg. No. 1,496,918 for the mark “RICH’S ON TOP” associated with “non-dairy whipped topping”. Each of these marks is valid and subsisting on the Principal Register. Each of these marks is also incontestable on the Principal Register.

5. Opposer has filed a use application for the mark “ON TOP” and logo as Serial No. 85/380,953 on July 26, 2011 in association with the goods “non-dairy whipped topping.” This trademark application has been allowed and the Statement of Use was accepted on August 22, 2012.

6. Opposer has used the mark “ON TOP” in association with whipped toppings long prior to the filing date of Applicant’s trademark application.

7. Opposer has continuously used the “ON TOP” trademarks to identify its products at least as early as 1986 and continues such use to this day.

8. Since long prior to the filing date of Applicant’s trademark application for “BETTER ON TOP!”, Opposer has extensively advertised and promoted its products under the “ON TOP” trademarks.

9. Upon information and belief, Applicant’s “BETTER ON TOP!” application consists of or comprises a phrase which, if used, would so resemble the “ON TOP” trademarks owned by Opposer, as to be likely, when used on or in connection with the goods sought to be registered by Applicant, to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. §1052(d).

## **COUNT 2**

10. Opposer incorporates the allegations of paragraphs 1-9 as if stated herein.

11. Applicant seeks registration of “BETTER ON TOP!” on “whipped topping.”

12. On information and belief, the sale of goods by Applicant under the “BETTER ON TOP!” mark is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer or as to the origin, sponsorship or approval of Applicant’s goods by Opposer, in violation of 15 U.S.C. §1125(a)(1)(A).

13. Opposer, therefore, believes it will be damaged by the registration of Application Serial No. 85/577,551 to Applicant.

**PRAYER FOR RELIEF**

WHEREFORE, Opposer prays that Application Serial No. 85/577,551 be denied, that Applicant be enjoined from obtaining registration of Application Serial No. 85/577,551, that no registration be issued to Applicant and that this opposition be sustained.

A check for the filing fee for each class in which Applicant seeks registration has been presented with the initial Notice of Opposition. It is requested that any fee necessary be charged to Deposit Account No. 06-0308.

Respectfully submitted this 11th day of September, 2012.

FAY SHARPE LLP

/signature on electronic submission form/

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Cleveland, Ohio 44115  
Telephone: 216-363-9000  
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E-Mail: bturung@faysharpe.com

*Attorney for Opposer*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this day I caused a true and correct copy of the foregoing NOTICE OF OPPOSITION to be served upon Applicant, VegiPro Brands, LLC, dba Exposure SMI Limited, by first class mail, postage prepaid, this 11th day of September, 2012, at the address below:

2655 University Street  
Eugene, Oregon 97403

FAY SHARPE LLP

/signature on electronic submission form/

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